

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

UNITED STATES OF AMERICA,

VS.

CRIMINAL ACTION NO. 4:06CR124-P-B

ERWIN DAVID RABHAN, ET AL.,

DEFENDANTS.

ORDER

This matter comes before the court upon Defendant Erwin David Rabhan's Motion to Exclude Case from the Speedy Trial Act [73-1] and Defendant Charles Brett Merrill's opposition response. After due consideration of the motion, the court finds as follows, to-wit:

Defendant Rabhan seeks to exclude his case from the Speedy Trial Act, citing 18 U.S.C. § 3161(h)(8)(B)(ii) which provides that a court may exclude any period of delay based on the court's conclusion that the "ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial" when "the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section." Defendant Merrill, one of five defendants in this case, objects to the motion, stressing his desire for a speedy trial.

Although the court can continue a case and exclude the period of time based on a finding of unusual complexity, a defendant may not waive the Speedy Trial Act prospectively. *Zedner v. United States*, 126 S.Ct. 1976, 1985 (2006). Thus, the court may not exclude Rabhan's case from the Speedy Trial Act and since that is the relief requested in the instant motion, said relief must be denied.

IT IS THEREFORE ORDERED AND ADJUDGED that Defendant Erwin David

Rabhan's Motion to Exclude Case from the Speedy Trial Act [73-1] is **DENIED**.

SO ORDERED this the 28th day of March, A.D., 2007.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE